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September 7, 2016

241447

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

ENTERED
Office of Proceedings
September 7, 2016
Part of
Public Record

Re: **Docket No. FD 35187 (Sub-No. 1)**
Grand Elk Railroad, Inc. – Acquisition of Incidental Trackage
Rights Exemption -- Norfolk Southern Railway Company

Amended Supplement

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a corrected copy of a letter included in the supplement tendered yesterday by Grand Elk Railroad, Inc. (“GDLK”). Specifically, Padnos, a shipper jointly served by GDLK and CSX Transportation, Inc. (“CSXT”) – until CSXT barred GDLK from exercising trackage rights in Grand Rapids – supplied a letter dated September 2, 2016 (the “Padnos Letter”) in support of GDLK. The Padnos Letter, which Padnos requested be made part of the record, describes an “agreement to consolidate rail lines” serving its plant, preserving its access to two carriers. That agreement was to be an attachment to the letter, but the attachment inadvertently was not included with yesterday’s filing. Counsel for GDLK has been alerted to the oversight. To correct the omission, GDLK has appended hereto a complete version of the Padnos Letter with the attachment.

If you have any questions regarding the enclosed materials, please contact me.
Thank you for your assistance on this matter.

Respectfully submitted,



Robert A. Wimbish
Attorney for Grand Elk Railroad, Inc.

Enclosures

cc: Craig Richey; Garrett Urban; all parties of record

September 2, 2016

VIA U.S. MAIL [or] ELECTRONIC FILING

Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20034

Deb Miller
Vice Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20034

Ann D. Begeman
Commissioner
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20034

Re: **Docket No. FD 35187 (Sub-No. 1)**
Grand Elk Railroad, Inc. – Acquisition of Incidental Trackage
Rights Exemption – Norfolk Southern Railway Company

Dear Chairman Elliott, Vice Chairman Miller and Commissioner Begeman:

I am writing you today on behalf of Padnos, a recycling operation with locations in Grand Rapids, Michigan that are directly affected by the above-referenced proceeding. Padnos asks that the Surface Transportation Board act quickly and decisively to restore the service that has been disrupted that allows the Grand Elk Railroad operations in Grand Rapids, Michigan. We rely on this service and this recent disruption has impacted us resulting in an inability to ship to certain customers. It is our understanding that the Grand Elk is taking necessary legal action to restore its service in Grand Rapids in the face of another railroad's objection. Padnos understands that this Board has the authority to order the service access by the Grand Elk be restored promptly and we have a vested business interest in seeing this happen quickly.

Padnos has been in the recycling business for over 110 years. We ship scrap products for recycling purposes to consumers throughout the United States and rely heavily on rail transportation to accomplish this in an efficient and cost effective manner. Padnos has enjoyed a dual service arrangement at our facility located at 601 Letellier SW in Grand Rapids for over 30 years. This arrangement provided us with direct service from Grand Elk on one line and the CSX on another. This dual service arrangement allowed us to reach customers that were serviced by different rail lines in a more cost effective manner than a reciprocal switch arrangement. Padnos has never had reason to believe that the service provided to us by the

Grand Elk would be disrupted without advance warning. In fact just over one year ago Padnos, working with the State of Michigan, the City of Grand Rapids, the Grand Elk Railroad, the NS Railroad and the CSX Railroad entered into an agreement to consolidate rail lines into our facility at 601 Letellier to reduce the number of roadway train crossings for the benefit of public service. As a part of this agreement Padnos insisted and was assured, in writing, that the dual service arrangement would be preserved. Attached please find a copy of the document preserving that agreement in writing, by all affected parties. As a result of this most recent disruption the rail traffic that had been moving via the Grand Elk line has now shifted to truck shipments.

That a short line operator such as Grand Elk would be forced, due to a contract dispute with another railroad to cease service over lines over which it has operated for years is astonishing to us. Padnos does not believe that the Board should sanction such a service disruption, or allow shippers that have come to depend on upon Grand Elk's service to be deprived of that service. Padnos believes that the Board could and should direct the restoration of this service to Grand Elk and that you are able to order all railroads in this dispute to negotiate new terms of operation in Grand Rapids that will allow a return of this vital service.

Padnos looks forward to the Board's prompt action on this issue. We urge you to please expedite consideration of Grand Elk's filing in this matter and ask the Board to take all necessary action to restore the access we have had for many years as soon as reasonably possible.

Respectfully submitted,



Scott Wolters

Senior Logistics Manager

Padnos

PRIVATE MEMORANDUM OF UNDERSTANDING

IMPACT OF CROSSING ELIMINATION INITIATIVE ON EXISTING & FUTURE RAIL OPERATIONS OF CSX TRANSPORTATION, NORFOLK SOUTHERN, GRAND ELK, AND PADNOS

In recognition of public safety benefits to be realized by eliminating the hazards of highway-railroad grade crossings through execution of projects which re-align railroad tracks in such a manner that certain grade crossings may be permanently removed, and with respect for the impact of such projects on current and future operations of the railroads and rail customers involved, the above-named parties do hereby set forth their mutual understanding of present conditions and establish their intent to mutually preserve and extend each parties existing rights before, during, and after the planned track realignment project.

RECITALS

WHEREAS, the Michigan Department of Transportation (MDOT), in compliance with federal guidelines for such work, has established a program to develop and provide funding for projects that eliminate highway-railroad grade crossings by realigning track to remove crossings while preserving and enhancing existing rail operations and rail customer access; and,

WHEREAS, MDOT has identified funding to support a project (the Project) to realign the existing Norfolk Southern/Grand Elk industrial spur into the Padnos scrap metal facility in downtown Grand Rapids, MI, as detailed in the site plan drawing (the Plan) provided on Exhibit A of this Memorandum; and,

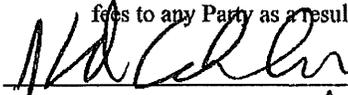
WHEREAS, as shown on the Plan, CSX Transportation (CSXT), Norfolk Southern, Grand Elk, and Padnos (the Parties) presently have various and independent underlying property interests and operating rights within the existing railroad rights-of-way (the Facilities) between Emporer and Fulton Street in the City of Grand Rapids, including multiple highway-railroad grade crossings of Emporer, Butterworth, Watson, and Fulton Street, as shown on the Plan; and,

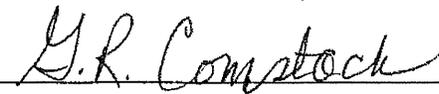
WHEREAS, CSXT, Norfolk Southern and Grand Elk have established trackage right agreements that grant Norfolk Southern and Grand Elk permission to use CSXT tracks to access the Facilities and those trackage rights are to be maintained, preserved and honored before, during, and after the project such that CSXT, Norfolk Southern and Grand Elk may continue to offer service to Padnos; and,

WHEREAS, the Parties have all reviewed, commented and collaborated on development of the Plan in such a manner that all relevant present and future operational and property issues have been discussed and resolved to the satisfaction of the Parties,

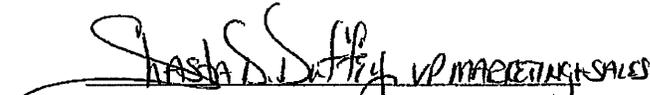
NOW, THEREFORE, the undersigned Parties hereby recognize that the Project, in accordance with the general outline of the Plan, will be undertaken upon the Facilities in order of and compliance with the following conditions:

1. This non-binding Memorandum of Understanding is for public safety project development purposes only, and it does not supersede or replace any other agreement(s) by or between any of the Parties.
2. MDOT provides funding and authorization for Grand Elk to proceed with its portion of the Project for realignment of the Norfolk Southern industrial spur tracks that lead to Padnos.
3. MDOT provides funding and authorization for CSXT to proceed with its portion of the Project for circuitry adjustments and track improvements along its main line and its industrial spur track that leads to Padnos.
4. CSXT coordinates with the Federal Railroad Administration related to the portion of the Project involving removal of Control Point Watson and accompanying circuitry adjustments.
5. Grand Elk works with Norfolk Southern to assure equitable disposition of any track materials not used in the Project for realignment purposes.
6. Upon completion of the Project, current operating rights are extended unto the new alignment such that CSXT, Norfolk Southern and Grand Elk preserve their respective abilities to provide competitive service to Padnos with no new or additional fees to any Party as a result of the Project.


CSX Transportation (name/title) *Sup Engineering*


Norfolk Southern Railway Company (name/title)

General Manager


Grand Elk Railroad (name/title)

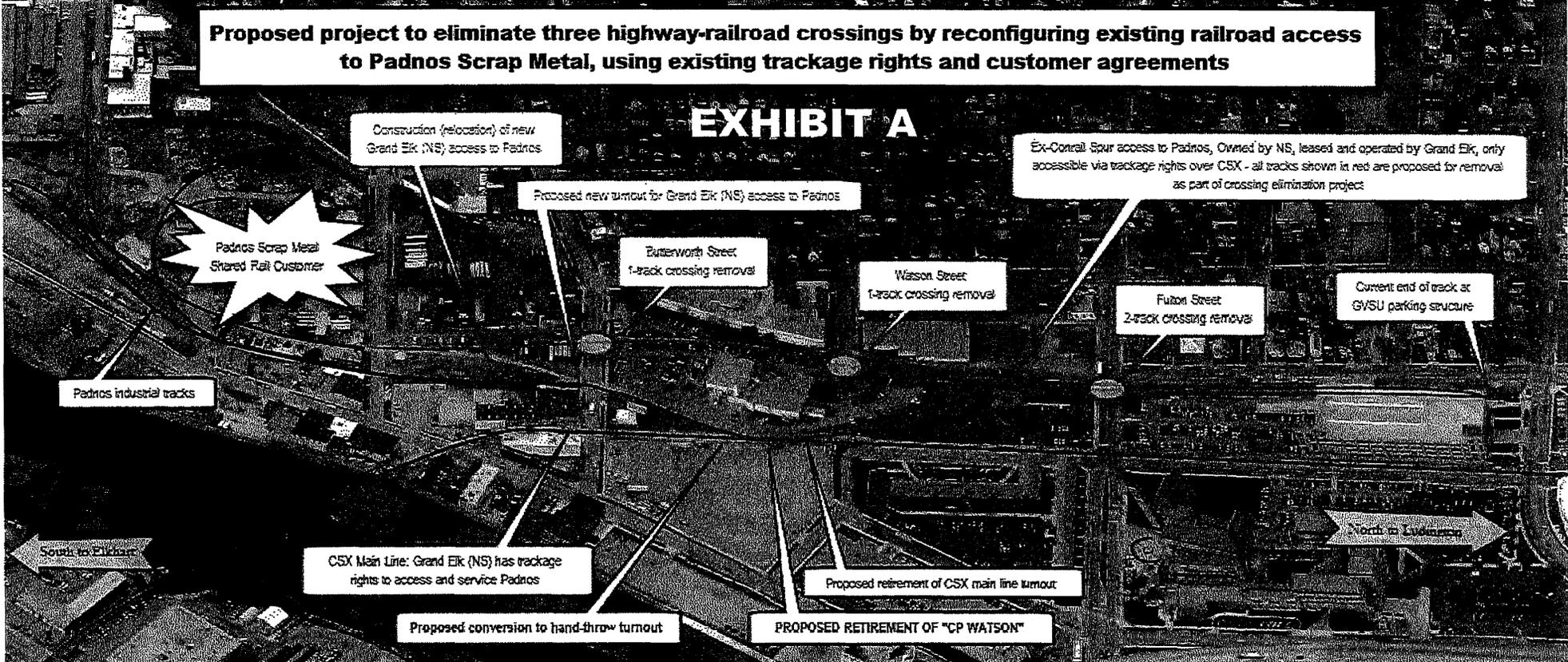

Padnos (name/title)

PADNOS Logistics Manager

Copy 5 - MDOT

Proposed project to eliminate three highway-railroad crossings by reconfiguring existing railroad access to Padnos Scrap Metal, using existing trackage rights and customer agreements

EXHIBIT A



Construction (relocation) of new Grand Elk (NS) access to Padnos

Proposed new turnout for Grand Elk (NS) access to Padnos

Ex-Conrail Spur access to Padnos, Owned by NS, leased and operated by Grand Elk, only accessible via trackage rights over CSX - all tracks shown in red are proposed for removal as part of crossing elimination project

Padnos Scrap Metal Shared Rail Customer

Euterworth Street 1-track crossing removal

Watson Street 1-track crossing removal

Fulton Street 2-track crossing removal

Current end of track at GVSU parking structure

Padnos industrial tracks

CSX Main Line: Grand Elk (NS) has trackage rights to access and service Padnos

Proposed retirement of CSX main line turnout

Proposed conversion to hand-thru turnout

PROPOSED RETIREMENT OF "CP WATSON"

South to Elkhart

North to Ludwigs